

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NORTH DAKOTA

IN RE: TOPP, PAUL, DEBTOR
CHAPTER 12 BANKRUPTCY CASE NO: 23-30163

MOTION TO EXTEND TIME TO FILE CHAPTER 12 PLAN

1. Debtor Paul D. Topp, through undersigned counsel, hereby requests the Court for an Order allowing additional time to file his Chapter 12 Plan of Reorganization.
2. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Bankruptcy Rule 9006 and Local Rule 2002-1(E)(4). This proceeding is a core proceeding.
3. As previously pled to this Court, this case required significant time to properly schedule, list and disclose Mr. Topp's operation to interested parties. In addition, significant time and resources spent on the real property sale motion, Bank Forwards' argument regarding whether Mr. Topp's operation was even property of the bankruptcy estate, and the hearing related thereto (Docket #19, 22, and 41), prevented undersigned counsel from focusing on the proposed Chapter 12 plan.
4. In addition, and more important to the issue of proposing the plan, Mr. Topp was recently advised (this week) that programs available at Farm Service agency in relation to loans guaranteed by FSA (see attached Exhibit 1) may impact his loan obligations with Bank Forward – potentially forgiving substantial amounts of FSA guaranteed loan obligations, potentially even to the amount of \$400,000 to \$500,000.00 if Mr. Topp qualifies.
5. With this newly discovered information, undersigned counsel and Mr. Topp believe an extension of time to file a proposed Chapter 12 Plan is prudent to avoid duplication of attorney work on a plan that may be substantially impacted by the FSA program(s),

benefiting the Debtor and also, Bank Forward. In addition, the remaining claims in the estate would also be benefited by increased cash flow from the potentially forgiven obligations through this program.

6. Also, delaying the filing of a proposed plan will reduce costs incurred by the estate, not only by Debtor's counsel to finalize and serve the plan on several parties, but by other interested parties, including Bank Forward, that may have to file objections to the first proposed plan while the FSA programs are explored.
7. Undersigned counsel has discussed this matter with counsel for the Chapter 12 Trustee, and the Trustee consents to the extension of the plan deadline for a period of 30 days from August 21, 2023.
8. 11 U.S.C. § 1221 provides that a debtor shall file a plan not later than 90 days after the order for relief, except that the court may extend the period if the need for an extension is attributable to circumstances for which the debtor should not be held justly accountable.
9. Here, Debtor and undersigned counsel did not, and could not have reasonably expected Bank Forward's argument regarding Debtor's property not being property of the bankruptcy estate. In addition, the information regarding the FSA programs providing funds appears to have been provided to lenders –and this information was not known to Debtor until this week.
10. Considering the size and complexity of this estate, the amount of time spent on prior issues before the Court, and a potential program that could significantly impact the projections of cash flow and treatment of Bank Forward's claims, the circumstances warrant and extension of the plan deadline to prevent duplicative efforts, work, and expenses.

WHEREFORE, based upon the above and foregoing, the Debtor and undersigned counsel hereby respectfully request that the Court extend the time to file the Chapter 12 Plan of Reorganization for 30 days from August 21, 2023.

Respectfully submitted this 18th day of August, 2023:

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**Farm Service Agency**

U.S. DEPARTMENT OF AGRICULTURE

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USDA Announces Additional Assistance for Distressed Farmers Facing Financial Risk

WASHINGTON, March 27, 2023 - The U.S. Department of Agriculture (USDA) today announced that beginning in April it will provide approximately \$123 million in additional, automatic financial assistance for qualifying farm loan program borrowers who are facing financial risk, as part of the \$3.1 billion to help distressed farm loan borrowers that was provided through Section 22006 of the Inflation Reduction Act (IRA). The announcement builds on financial assistance offered to borrowers through the same program in October 2022.

The IRA directed USDA to expedite assistance to distressed borrowers of direct or guaranteed loans administered by USDA's Farm Service Agency (FSA) whose operations face financial risk. For example, in the October payments, farmers that were 60 days delinquent due to challenges like natural disasters, the pandemic or other unexpected situations were brought current and had their next installment paid to give them breathing room.

"In too many cases, the rules surrounding our farm loan programs may actually be detrimental to helping a borrower get back to a financially viable path. As a result, some are pushed out of farming and others stuck under a debt burden that prevents them from growing or reacting to opportunities," said Agriculture Secretary Tom Vilsack. "Loan programs for the newest and more vulnerable producers must be about providing opportunity and tailored to expect and manage stumbles and hurdles along the way. Through this assistance, USDA is focusing on generating long-term stability and success for distressed borrowers."

In October 2022, [USDA provided approximately \\$800 million](#) in initial IRA assistance to more than 11,000 **delinquent direct and guaranteed borrowers** and approximately

2,100 borrowers who had their farms liquidated and still had remaining debt. USDA shared that it would conduct case-by-case reviews of about 1,600 complex cases for potential initial relief payments, including cases of **borrowers in foreclosure or bankruptcy**. These case-by-case reviews are underway.

At the same time in October 2022, USDA announced that it anticipated payments using separate pandemic relief funding totaling roughly \$66 million on over 7,000 direct loans to borrowers who used the USDA Farm Service Agency's **disaster-set-aside** option during the COVID-19 pandemic. The majority of these payments have been processed and USDA anticipates it will complete all such payments in April 2023.

New Assistance for Distressed Borrowers

FSA intends to provide the new round of relief starting in April to additional distressed borrowers. This will include approximately \$123 million in automatic financial assistance for qualifying Farm Loan Program (FLP) direct loan borrowers who meet certain criteria. Similar to the automatic payments announced in October 2022, qualifying borrowers will receive an individual letter detailing the assistance as payments are made. Distressed borrowers' eligibility for these new categories of automatic payments will be determined based on their circumstances as of today. More information about the new categories that make up the \$123 million in assistance announced today and the specific amount of assistance a distressed borrower receives can be found described in this fact sheet, [IRA Section 22006: Additional Automatic Payments, Improved Procedures, and Policy Recommendations](#).

To continue to make sure producers are aware of relief potentially available to them, all producers with open FLP loans will receive a letter detailing a new opportunity to receive assistance if they took certain extraordinary measures to avoid delinquency on their FLP loans, such as taking on more debt, selling property or cashing out retirement accounts. The letter will provide details on eligibility, the specific types of actions that may qualify for assistance, and the process for applying for and providing the documentation to seek that assistance.

These steps are part of a process USDA announced along with the October payments that is focused on assisting borrowers unable to make their next scheduled installment. Earlier this year, all borrowers should have received a letter detailing the process for seeking this type of assistance even before they become delinquent. Borrowers who are within two months of their next installment may seek a cashflow analysis from FSA using a recent balance sheet and operating plan to determine their eligibility.

Tax Resources

USDA will continue to work with the Department of Treasury to help borrowers understand the potential tax implications from the receipt of an IRA payment, including that options may be available to potentially avoid or alleviate any tax burden incurred as a result of receiving this financial assistance.

In early April, USDA will send a specific set of revised tax documents, educational materials and resources to borrowers that received assistance in 2022, including a link to a webinar hosted by a group of farm tax experts to provide education on the options available. USDA cannot provide tax advice and encourages borrowers to consult their own tax professional, but FSA is providing educational materials for borrowers to be aware of the options. USDA has tax-related resources available at farmers.gov/taxes.

Improved Procedures and Policy Recommendations

FSA is finalizing changes to its policy handbooks to remove unnecessary hurdles, improve loan making and loan servicing and provide more flexibility on how loans are structured to maximize the opportunities for borrowers. Additional details on those changes can be found in the linked fact sheet and are the start of a broader set of process enhancements. The fact sheet also provides information on the eight, no-cost legislative proposals included in the Fiscal Year 2024 President's Budget that are designed to improve the borrower experience.

USDA touches the lives of all Americans each day in so many positive ways. In the Biden-Harris Administration, USDA is transforming America's food system with a greater focus on more resilient local and regional food production, fairer markets for all producers, ensuring access to safe, healthy and nutritious food in all communities, building new markets and streams of income for farmers and producers using climate smart food and forestry practices, making historic investments in infrastructure and clean energy capabilities in rural America, and committing to equity across the Department by removing systemic barriers and building a workforce more representative of America. To learn more, visit www.usda.gov.

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Richmond, Vt., Aug. 14, 2023 – The U.S. Department of Agriculture's (USDA) Farm Service Agency (FSA) and Risk Management Agency (RMA) have authorized policy flexibilities for key disaster assistance programs and crop insurance to aid Northeast agricultural operations that have been significantly impacted by

Qualifying Guaranteed Farm Loan Borrowers Facing Financial Risk

WASHINGTON, August 11, 2023 – The U.S. Department of Agriculture (USDA) today announced approximately \$530 million in additional

Emergency Grain Storage Facility Assistance Program

WASHINGTON, Aug. 7, 2023 – The U.S. Department of Agriculture's Farm Service Agency (FSA) is beginning to issue cost-share assistance payments through the Emergency Grain Storage Facility

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<https://www.fsa.usda.gov/news-room/news-releases/2023/usda-announces-additional-assistance-for-distressed-farmers-facing-financial-risk>



USDA To Provide Additional Financial Assistance to Qualifying Guaranteed Farm Loan Borrowers Facing Financial Risk

Press Release

Release No. 0166.23

Contact: USDA Press

Email: press@usda.gov

WASHINGTON, Aug. 11, 2023 – The U.S. Department of Agriculture (USDA) today announced it will begin providing additional, automatic financial assistance for qualifying guaranteed Farm Loan Programs (FLP) borrowers who are facing financial risk. The announcement is part of the \$3.1 billion to help certain distressed farm loan borrowers that was provided through Section 22006 of the Inflation Reduction Act.

“USDA continues to make progress on our goal to provide producers access to the tools they need to help get back to a financially viable path and ultimately succeed as thriving agricultural businesses,” said Agriculture Secretary Tom Vilsack. “The financial assistance included in today’s announcement will provide a fresh start for distressed borrowers with guaranteed farm loans and will give them the opportunity to generate long-term stability and success.”

Since the Inflation Reduction Act was signed into law by President Biden in August 2022, USDA has provided approximately \$1.15 billion in assistance to more than 20,000 distressed borrowers as a part of an ongoing effort to keep borrowers farming, remove obstacles that currently prevent many borrowers from returning to their land, and improve the way that USDA approaches borrowing and loan servicing in the long-term. The financial assistance

announced today will provide qualifying distressed guaranteed loan borrowers with financial assistance similar to what was already provided to distressed direct loan borrowers. Based on current analysis, the financial assistance announced today will assist an estimated approximately 3,500 eligible borrowers, subject to change as payments are finalized.

An FLP guaranteed loan borrower is distressed if they qualify under one of the options below. FLP guaranteed borrowers who qualify under multiple options will receive a payment based on the option that provides the greatest payment amount:

- Payment of any outstanding delinquency on all qualifying FLP guaranteed loans as of Oct. 18, 2022. This includes any guaranteed loan borrowers who did not receive an automatic payment in 2022 on that loan because they were not yet 60 days delinquent as of Sept. 30, 2022, as well as guaranteed borrowers that became delinquent on a qualifying FLP guaranteed loan between September 30, 2022, and Oct. 18, 2022.
- Payment on a qualifying FLP guaranteed loan for which a guaranteed loan borrower received a loan restructure, which modified the guaranteed loan maturity date, between March 1, 2020, and Aug. 11, 2023. The payment amount will be the lesser of the post-restructure annual installment or the amount required to pay the loan in full. The guaranteed loan must not have been paid in full prior to Aug. 11, 2023.
- Payments on certain deferred amounts on qualifying FLP guaranteed loans, not to exceed \$100,000, for guaranteed borrowers who received a deferral or another type of payment extension, for at least 45 days, between March 1, 2020, and Sept. 30, 2022, from their guaranteed lender on that qualifying guaranteed loan in response to COVID-19, disasters, or other revenue shortfalls. The Inflation Reduction Act payment amount will be the lesser of the most recent deferral or extension amount on the qualifying FLP guaranteed loan, or the amount required to pay that loan in full. The guaranteed loan must not have been paid in full prior to Aug. 11, 2023.

This assistance is only available for FLP guaranteed loan borrowers who did not or will not receive an initial payment on the same FLP guaranteed loan under Inflation Reduction Act assistance announced in October 2022.

Distressed guaranteed borrowers qualifying for this assistance will receive a United States Department of the Treasury check that is jointly payable to the borrower and the lender. These borrowers will also receive a letter from FSA informing them of Inflation Reduction Act assistance they will receive as well as instructions to make an appointment with their

lender to process the payment and apply it to their qualifying guaranteed loan accounts. Guaranteed lenders will receive an email in the coming days informing them of this assistance and any next steps. Lenders will also receive letters informing them which borrowers will receive assistance and the amount of assistance they will receive.

Any distressed guaranteed borrowers who qualify for these forms of assistance and are currently in bankruptcy will be addressed using the same case-by-case review process [announced in October 2022](#) for complex cases.

FSA will also provide relief to qualifying FLP guaranteed loan borrowers determined to be distressed borrowers based on liability for remaining federal debt subject to debt collection and garnishment after the liquidation of their guaranteed loan account as of July 31, 2023. This will allow some borrowers to potentially return to farming. Guaranteed borrowers who qualify for this assistance will have their federal debt paid automatically by FSA and will receive a letter informing them of the payment made on their federal debt.

All letters to qualifying guaranteed loan borrowers will contain instructions for opting out of assistance if a borrower chooses to do so.

Important Tax Information

Similar to other USDA Inflation Reduction Act assistance, payments provided to borrowers and payments to be applied to FSA farm loan accounts will be reported to the Internal Revenue Service (IRS). Borrowers receiving this assistance will receive a 1099 form from FSA. Please note that payments over \$600 are subject to Federal and State Income Taxes and will be reflected on your annual 1099 form. Borrowers are encouraged to consult a tax professional with all tax-related questions regarding any Inflation Reduction Act assistance received. USDA also has tax-related resources at [farmers.gov/taxes](#).

Individual Requests for Farmers Seeking Assistance

In addition to the automatic payments announced today for distressed guaranteed loan borrowers, FSA continues to accept and review individual distressed borrower assistance requests from direct loan borrowers who missed a recent installment or are unable to make their next scheduled installment on a qualifying direct FLP loan. All FSA direct borrowers should have received a [letter detailing the eligibility criteria and process](#) for seeking this type of assistance, which is available even before they become delinquent. As the letter details, borrowers who are within two months of their next installment may seek a cash

flow analysis from FSA using a recent balance sheet and operating plan to determine their eligibility.

FSA direct borrowers also received a [letter detailing an opportunity to receive assistance](#) if they took certain extraordinary measures to avoid delinquency on their qualifying direct FLP loans, such as taking on or refinancing more debt, selling property, or cashing out retirement or college savings accounts.

Borrowers can submit requests for extraordinary measures or cash flow-based assistance in person at their local FSA office or by sending in a direct request using the farmers.gov 22006 assistance request portals at [farmers.gov/loans/inflation-reduction-investments/assistance](#). All requests for assistance must be received by Dec. 31, 2023.

As USDA learns more about the types of situations financially distressed farmers are facing, the Department will continue to update borrowers and the public about new assistance for distressed borrowers. USDA will also provide regular updates about its progress in deploying this funding to farmers who need it.

USDA touches the lives of all Americans each day in so many positive ways. In the Biden-Harris administration, USDA is transforming America's food system with a greater focus on more resilient local and regional food production, fairer markets for all producers, ensuring access to safe, healthy and nutritious food in all communities, building new markets and streams of income for farmers and producers using climate smart food and forestry practices, making historic investments in infrastructure and clean energy capabilities in rural America, and committing to equity across the Department by removing systemic barriers and building a workforce more representative of America. To learn more, visit www.usda.gov.

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